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January 9, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: ET Docket No. 04-373
SafeView, Inc., Request for Waiver of Sections 15.31 and 15.35 of the
Commission's Rules
Ex Parte Communication

On behalf of First Avenue Networks, Inc., (hereinafter "FAN") pursuant to Section 1.1206(b)(1) of the Commission's Rules, we electronically file this written *ex parte* communication.

I. INTRODUCTION

FAN [NASDAQ: FRNS] offers rapidly deployable, highly reliable, and flexible solutions for carriers and government agencies requiring wireless backhaul, fiber network extensions, and broadband connectivity. Our First Avenue Networks Solutions subsidiary specializes in providing physically-

diverse broadband connectivity pursuant to federal standards. We offer **MuniFrame™** a service used for building a government-grade or carrier-grade framework throughout a municipality specifically designed as the infrastructure from which other systems may be launched or “hung”— including first responder networks, fiber extensions, broadband over power line (BPL), Wi-Fiber, Wi-Fi, Wi-Max, etc.

FAN acquired spectrum licenses, transceiver equipment and other related operations from predecessor fixed wireless companies Teligent, Inc. and Advanced Radio Telecommunications (ART), and now possesses the premier area-wide millimeter fixed wireless spectrum holdings in the United States, including assets in the 24 GHz and 39 GHz bands. FAN also operates systems in the point-to-point bands, including 18 GHz and 23 GHz. FAN management, and its predecessor companies, participated in building or restoring business continuity protocol (BCP) and disaster recovery (DR) communications networks in Manhattan post-9/11 using physically-diverse fixed wireless.

FAN urges the FCC to seriously and cautiously review the positions of licensees who operate in the bands that SafeView seeks to operate its equipment.

II. THE REQUEST FROM SAFEVIEW DIRECTLY COMPROMISES SAFETY, THE CONCEPT OF LICENSING, AND BUSINESS MODELS

- a. Direct overlap. FAN holds area-wide spectrum licenses in the 24 GHz DEMS band. SafeView seeks to operate above permitted power levels in airports in this exact band.¹
- b. Licensee already operates in airports. FAN currently operates point-to-point systems in airports in the 24 GHz band. These systems support *Federal Aviation Administration* operations. We expect to deploy more systems in airports. First Avenue offers its services throughout the United States and holds many different types of 24 GHz point-to-point and point-to-multipoint equipment that it uses and offers to use in many locations—including airports. Additionally, FAN operates 24 GHz systems in urban areas and suburban areas that *surround* airports. Accordingly, FAN views very seriously any attempts by unlicensed systems to operate in violation of the power levels in the exact same venue.
- c. Significant test burdens. Did SafeView access and thoroughly test all FAN-owned multipoint or point-to-point systems in order for SafeView to determine how their system interferes? Does SafeView even possess access rights to such equipment? Under what circumstances is it reasonable to offer such access to SafeView?
- d. Licensee rights. Licensed operators are constantly seeking to deploy new systems in their own bands—and hold the right to consider operating, or leasing to providers of, indoor and outdoor services. That includes recently purchased multipoint systems, and may later include indoor broadband connectivity equipment, advanced vehicular radar systems, and also SafeView-style systems. Has SafeView considered how many of

¹ See In the Matter of SafeView, Inc. Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25 – 30 GHz Range, ET Docket No. 04-373, *Ex Parte Communication* (Mar. 11, 2005), at 4, 6-7.

these systems interfere with each other, especially if licensees decide to offer such systems to the Government and private industry?

- e. Test protocol. If the FCC seeks to review SafeView's proposed test procedures it is the position of FAN that all impacted licensees must be given a reasonable opportunity to promulgate their own test procedures to which SafeView must comply prior to any "official view" being taken as to whether interference will or will not occur. SafeView must bear the costs for necessary testing of all long-standing FAN equipment, all new FAN equipment, all equipment that FAN is studying, and all equipment that FAN might study in the coming years. Also, FAN is concerned about its privacy rights in that it does not understand why SafeView would be entitled to detailed proprietary information.
- f. Commercial disruption. What confidence can licensees enjoy in developing and funding business plans if unlicensed equipment makers possess the opportunity to constantly:
 - i. call into question long standing principals about the stability of a primary license,
 - ii. impose additional coordination expenses upon licensees,
 - iii. prevent or diminish the ability to operate existing services or sell new services, and
 - iv. require disruptive and expansive testing of proposed and existing equipment?
- g. Responsible approach. If SafeView is truly interested in a responsible operation of its system in licensee bands, it is the burden of SafeView to first approach the licensees and engage in a direct dialogue on the myriad technical, planning, logistic, and economic issues that their proposal raises. To date no SafeView executives approached this licensee.

III. CONCLUSION

The positions taken by SafeView are troubling at best. At worst they directly attack basic tenants of safe operation of facilities that serve the government and private sector, attack basic licensee rights, and cause significant economic disruption. FAN respectfully requests that the FCC dismiss all SafeView requests for authority to operate any extraordinary power-level systems without the consent of the licensees.

Respectfully Submitted,

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Ms. Marlene H. Dortch

January 9, 2006

Page 7

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Ms. Marlene H. Dortch

January 9, 2006

Page 8

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